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No. 99-521

In The

Supreme Court of the United States

LESLIE FITZGERALD, ELIZABETH HARLING AND CHARLES HUGGINS,

Petitioners,

versus

RICHARD STALDER, individually, and in his capacity as Secretary, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Louisiana

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. The Respondent's Brief Contains Two Significant Misrepresentations of Fact

The Respondent's Brief contains two related and significant misrepresentations of fact. First, the Respondent states that *"all parties to this litigation agree the sales tax paid by the Louisiana residents is the same as the use tax paid by the non-Louisiana residents bringing a vehicle into the State for the first time."* (Brief at p. 2). As the Petitioners explained in their Petition for Writ of Certiorari, and as illustrated by the example set forth in Part II below, it is quite clear that current Louisiana residents who move from one local jurisdiction to another within the State do *not* pay the same amount of taxes as persons who move into the same jurisdictions from other States. The Court would not be faced with this issue if the Respondent's statement were true.

The Respondent also states that *" . . . petitioners argue that the local taxing authorities enforce their taxes only against persons who move from other states. This argument is clearly wrong and misleading based upon the facts agreed-upon by the parties to this litigation"* (Brief at p. 10). As noted in the Petition, the local taxing authorities in Louisiana openly admit that, as a matter of policy, they enforce their *use taxes* only against persons who move into their jurisdictions and import property from other States, and they never enforce these taxes against current Louisiana residents who move into the same jurisdictions and import property from elsewhere in the State. The record clearly reflects this admission, as evidenced by the deposition testimony of the Respondent's designated representative,

relevant excerpts of which are included in Appendix F hereto.[1]

As explained in the Petition for Writ of Certiorari, the proper analysis in this case would compare the *use taxes* paid by Louisiana residents and the *use taxes* paid by non-Louisiana residents, not the *sales taxes* paid by Louisiana residents and the *use taxes* paid by non-Louisiana residents. This latter view results in only a partial analysis,

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[1] Specifically, the fact that the local authorities enforce their use taxes only against non-residents was established by the testimony of Judith Speziale, the designated representative of the Vehicle Commissioner, who collects use taxes as the Respondent's agent. This testimony established two significant facts, neither of which has ever been contested. First, the local authorities enforce their use taxes only against persons who move into their respective jurisdictions from other States; they never enforce these taxes against persons who move from elsewhere in Louisiana. Second, the local authorities never grant use tax credits for sales taxes paid in other local jurisdictions, whether in Louisiana or in another State. Accordingly, current Louisiana residents who move within the State and who paid no local sales taxes when they bought their cars, as well as those who did pay such taxes, but at a lower rate than the use taxes imposed in their new domicile, are able to avoid paying local use taxes when they move simply because they already are Louisiana residents. It is not a tax credit, therefore, that insulates current residents from their liability for use taxes when they move within the State; rather, it is their status as residents, against whom these taxes are never enforced. It was the discovery of these facts that led the Petitioners to abandon their original claims that they were entitled to credits for taxes they had paid to local authorities in other States and to assert, instead, that they are entitled to a refund in the entire amount of the local use taxes they were required to pay in Louisiana.

because it compares only the local *sales taxes* paid by a resident who buys a car in a local jurisdiction and *remains* in that jurisdiction with the local *use taxes* paid by a person who moves into that jurisdiction from another State. It does not compare the local *use taxes* paid by a current resident who moves from one local jurisdiction to another within the State and the local *use taxes* paid by a person who moves into the same jurisdiction, but from another State.

The Petitioners recognize, as the lower Courts held, that the person who buys a car in a local jurisdiction and remains in that jurisdiction is similarly situated with a person who moves into the same jurisdiction and imports a car from another State. In these circumstances, the current resident would pay the same amount in local *sales taxes* as the new resident would pay in local *use taxes*. In fact, this is the very purpose of a use tax; that is, to bring each of these parties to an equal position regarding the total amount of tax paid. Yet, just as these persons are similarly situated, so, too, are the current Louisiana resident who *moves* from one local jurisdiction to another in the State and the non-Louisiana resident who moves into the same local jurisdiction from another State. The practice complained of is that the current resident *is not required to pay any local use taxes* to the authorities in his new domicile, even if he paid no local sales taxes when he bought his car. The similarly situated person who moved from another State, however, *is required to pay a local use tax*. It is this disparity that the Respondent ignores and that the lower Courts failed to recognize.

It is important to bear in mind that the ordinances, as written, impose the use tax uniformly on *all tangible personal property brought into the taxing jurisdiction,* whether from another State or from another city or parish within Louisiana. By enforcing the use tax only against non-Louisiana residents, however, the local taxing authorities have effectively rewritten the ordinances to impose the tax on *the use of tangible personal property within the taxing jurisdiction when the property is imported from another State,* and to exempt from the tax *the use of tangible personal property within the taxing jurisdiction when the property is imported from other local jurisdictions within Louisiana.*

II. Current Louisiana Residents Who Move from One Local Jurisdiction to Another Within the State Do *Not* Pay the Same Amount of Tax as Persons Who Move from Other States

As noted in the Petition for Writ of Certiorari, each local taxing authority in Louisiana imposes its own taxes independently of the other political subdivisions of the State, and they do so at rates that vary from one jurisdiction to another (from zero to 5%). Cameron Parish, for example, imposes no local sales or use taxes at all, while the various Orleans Parish authorities impose their taxes at the combined rate of 5%. Also as noted in the Petition (and re-emphasized above), the local taxing authorities in Louisiana enforce their use taxes only against persons who move into their jurisdictions from other States; they never enforce these taxes against current Louisiana residents who move from other local jurisdictions within the State. To consider this practice together with the fact that

the various local jurisdictions impose their taxes at different rates is to recognize that Louisiana residents do *not* pay the same amount of sales taxes as non-residents pay in use taxes. A simple example illustrates the point.

Consider the application of the local sales and use tax ordinances to three different taxpayers. The first taxpayer, "Orleans," purchases a car for $20,000 in New Orleans, where he resides, and he is required to pay local sales taxes at the rate of 5% of the purchase price, or $1,000. The second taxpayer, "Cameron," moves to New Orleans from Cameron Parish. While he was a resident of Cameron Parish, Cameron purchased exactly the same kind of car that Orleans bought. Because Cameron Parish imposes no local sales or use taxes, however, Cameron did not have to pay any local sales taxes when he bought his car. Nor will he have to pay any local use taxes when he moves to New Orleans, because the local authorities do not enforce their taxes against current Louisiana residents who move into the City from other local jurisdictions in the State, notwithstanding that the local ordinances on their face impose the use tax equally on Louisiana residents and non-residents.

Now consider a third taxpayer, "Texas." Texas moves into New Orleans from the State of his namesake, and he brings with him the same kind of car that Cameron owns. Unlike Cameron, however, Texas will be required to pay a 5% use tax on the $20,000 value of his car, or $1,000. In other words, Texas, who moves from another State, will be required to pay a local tax that Cameron, the current Louisiana resident, will not have to pay. Thus, contrary to the Respondent's assertion, current Louisiana residents such as Cameron who move from one local jurisdiction to

another within the State do *not* pay the same amount of taxes as persons such as Texas who move from other States. This disparity would not exist if the New Orleans ordinances were enforced as written.

Given this example, the Respondent would have the Court focus on the fact that Texas would have to pay the same amount of local *use taxes* as Orleans had to pay in local *sales taxes*. This approach, which the lower Courts adopted, fails to recognize the disparity in the treatment of Cameron and Texas, both of whom engaged in the same taxable event – the importation of an item of tangible personal property for use in New Orleans. As between these persons, only Texas would be subject to the local use tax. Cameron would be freed from his obligation simply because he moved from elsewhere in Louisiana, and without regard to the fact that he paid no similar taxes when he bought his car.

III. One's Liability for a Local Use Tax Does Not Turn Upon the Registration of a Vehicle

The Respondent argues in its Brief that "while the tax is based upon use of the vehicle within the state, the triggering event for that tax is the registration of the vehicle within the state." (Brief at p. 9). This argument confuses the time at which the tax accrues with the time at which it is to be collected.

It is clear from the governing ordinances that the registration of a vehicle with the State has nothing to do with one's liability for local use taxes, which are imposed upon "the *use* . . . of tangible personal property . . . *within the Parish*" (Natchitoches Parish School Board Sales and

Use Tax Ordinance, Section 2.01; Petition, Appendix D), or upon "the *use . . . in the city* of each item or article of tangible personal property" (New Orleans Code, Art. VI, Section 150-576; Petition, Appendix E).

It is true that each local taxing authority, as an administrative matter, provides for the *collection* of its vehicle use taxes by the Louisiana Vehicle Commissioner when the taxpayer registers his vehicle after the tax has accrued. For example, Section 4.06 (1)(b) of the Natchitoches Parish School Board Sales and Use Tax Ordinance (Appendix G) provides that "the tax *levied* by this Ordinance [*i.e.*, by Section 2.01] on the *use* of any such vehicle in the Parish shall be *due* at the time first registration in the Parish is required by the Vehicle Registration License Tax Law (R.S. 47:451, et seq.)." (See Art. VI, Section 150-601 of the New Orleans Code (Appendix H) for the same rule in that jurisdiction). The act of registration, therefore, does not represent the "triggering event" for the tax, as the Respondent suggests. Rather, the local taxing authorities merely have chosen, as a matter of administrative convenience, to *collect* their vehicle use taxes when the vehicle is to be registered with the Vehicle Commissioner (or when the registration is to be renewed, in the case of a taxpayer who has moved into the taxing jurisdiction from elsewhere in Louisiana).

The Respondent's argument that "tourist and other short-term visitors are under no obligation to register their vehicles and therefore are not levied a tax under any circumstance" is equally unsound. (Brief at p. 9). It is not the lack of any duty to register their vehicles that insulates these persons from local use taxes, but the failure of their activity to rise to the level of a taxable use. Section

3.02 of the Natchitoches Parish School Board Sales and Use Tax Ordinance (Appendix I), for example, indicates an intention to apply the tax only to "tangible personal property *after it has come to rest in the Parish and has become a part of the mass of property in the Parish*" (emphasis added). The Respondent's argument to the contrary is simply disingenuous, if not wholly irrelevant.

Finally, the hypothetical example set forth in Part II above illustrates the error of the Respondent's contention that "individuals registering their vehicle for the first time within Louisiana, whether they are a new resident or an old resident are treated identically under the Louisiana tax scheme." (Brief at p. 9). The disparity in treatment could not be more clear.

CONCLUSION

The local taxing authorities in Louisiana are enforcing their use tax ordinances in a manner that violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment. The effect of this treatment is far-reaching: *during the three-year period preceding the filing of this case, over 90,000 persons had been affected by the violations complained of here.* That number has increased substantially during the six years that this litigation has been pending, and it will continue to grow as the local authorities carry on with their established practice of enforcing their use taxes only against persons who move into their jurisdictions from other States. Because the State courts now have expressly approved of this practice, generations of future citizens will be adversely affected unless this Court intercedes. For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX F

* * *

[p. 35] A East Baton Rouge Parish.

Q All right. And any person who comes into the state of Louisiana and moves into East Baton Rouge Parish is going to owe at least four percent use tax?

A Yes.

Q And that's going to be local tax, isn't it?

A Yes.

Q To East Baton Rouge Parish and the entities within East Baton Rouge Parish?

A Right, based on the current market value of the vehicle. And we determine that by taking seventy-five percent of the retail value.

Q So if they come in with a $10,000 – a vehicle that has a NADA book value of $10,000, you take 7500 and multiply four percent times that, and that's going to be the minimum tax they're going to pay?

A That's right.

Q And, of course, if they came from Alabama, they're going to pay six percent?

A That's right.

Q Now, I want to contrast that with a person – and as we discussed yesterday, I believe Cameron Parish has no local sales tax?

[p. 36] A Right.

Q And that's a parish in Louisiana. If a person moved from Cameron Parish – a Louisiana resident – to East Baton Rouge Parish and their vehicle came up to be re-registered; in other words, it had already been registered in Cameron and they move to East Baton Rouge, would you collect any tax from that person whatsoever?

A Taxes are collected only at the time the initial title application is made. If the application was made in Cameron Parish, they would pay the applicable taxes in that area, and then they could move anywhere in the state of Louisiana that they wanted to and not be taxed on that vehicle any more.

Q Just so that I'll understand, the person that came in from Alabama – Alabama's the first one on the list, so we'll just use that one. If they came in from Alabama and moved to East Baton Rouge Parish, even if that person had paid eight percent tax in Alabama, no matter how much tax he paid, if he paid eight percent in Alabama, he's going to pay another six percent when he moves to East Baton Rouge Parish?

A That's right.

[p. 37] Q But if a person moved on the same day from Cameron Parish where he had registered the vehicle and paid four percent tax and he moved to East Baton Rouge Parish, he would pay no additional tax?

A That's right.

Q If the person moved from Alabama to Cameron Parish, he would pay two percent tax?

A Right.

Q That same person following my same hypothetical?

A Right.

Q The registration when a car is registered in Louisiana – I think it varies from different vehicles – but as to automobiles, registration is good for two years?

A That's right.

Q And then you have to renew it?

A Right.

Q And what I was trying to get at a minute ago is that when you renew your registration, if you're still in Louisiana, it doesn't matter what parish you moved from or to, you're not going to pay any additional tax?

A Not state tax, no, as in taxes to us.

Q You would not collect any tax?

[p. 38] A We would not collect any tax upon re-registration of a vehicle, renewal of registration.

Q To move from out of state – from anywhere out of the state of Louisiana to the state of Louisiana creates a taxable event?

A That's right.

Q But to move from any parish in Louisiana to another parish in Louisiana does not create a taxable event?

A That's right.

* * *

APPENDIX G

* * *

Section 4.06. The tax imposed by this Ordinance upon the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer, or any other vehicle subject to the Louisiana Vehicle Registration License Tax of the State of Louisiana shall be collected as provided in this section.

(1) The tax levied by this Ordinance on any such vehicle shall be paid to the Vehicle Commissioner as agent of the Collector of Revenue of the State of Louisiana, at the time of application for a certificate of title or vehicle registration license. No certificate of title or vehicle registration license shall be issued until the tax has been paid.

(a) The tax levied by this Ordinance on the sale of any such vehicle shall be due at the time of registration or any transfer of registration as required by the Vehicle Registration License Tax Law of the State of Louisiana (R.S. 47:451, et seq.).

(b) The tax levied by this Ordinance on the use of any such vehicle in the Parish shall be due at the time first registration in the Parish is required by the Vehicle Registration License Tax Law (R.S. 47:451, et seq.).

* * *

APPENDIX H

DIVISION 5. COLLECTION

Sec. 150-601. Tax collectible from all dealers.

The tax imposed by this division shall be payable upon the retail sales price, as of the moment of the sale, or upon the cost price, as of the moment of the purchase, or upon sales of service, as the case may be, and shall be collectible from all persons engaged as dealers in the sale at retail or those engaged in the use, consumption, distribution and the storage of tangible personal property and/or the sales of services. At the moment of payment of the tax, any tax collected shall become the property of the city.

(1) The tax levied on any such vehicle, which is hereby defined to be any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semitrailer, motorbus, house trailer, or any other vehicle subject to the vehicle registration license tax, shall be paid to the director of the department of finance of the city, (or to the collector of revenue of the state if so delegated by contractual agreement as herein authorized), at the time of application for a certificate of title or vehicle registration license.

* * *

APPENDIX I

EXEMPTIONS AND EXCLUSIONS FROM TAX

* * *

Section 3.02. It is not the intention of this Ordinance to levy a tax upon articles of tangible personal property imported into the Parish, or produced or manufactured in the Parish, for export; nor is it the intention of this Ordinance to levy a tax on bona fide interstate commerce. It is, however, the intention of this Ordinance to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in the Parish, of tangible personal property after it has come to rest in the Parish and has become a part of the mass of property in the Parish.

* * *